

AMENDED IN ASSEMBLY JANUARY 5, 2012

AMENDED IN ASSEMBLY JANUARY 4, 2012

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 593

Introduced by Assembly Member Ma

February 16, 2011

An act to ~~add Chapter 6 (commencing with Section 1566) to Title 12 of Part 2~~ amend Section 1473.5 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 593, as amended, Ma. Domestic violence: battering: recall and resentencing.

Existing law authorizes every person who is unlawfully imprisoned or restrained of his or her liberty to prosecute a writ of habeas corpus to inquire into the cause of that imprisonment or restraint.

Existing law also provides, until January 1, 2020, that a writ of habeas corpus may be prosecuted on the basis that expert testimony relating to intimate partner battering and its effects was not received in evidence at the trial court proceedings relating to a prisoner's incarceration for the commission of a violent felony committed prior to August 29, 1996, if there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that if the testimony had been admitted, the result of the proceedings would have been different.

This bill would make the provisions for a writ of habeas corpus based on intimate partner battering operative indefinitely. The bill would also provide that a writ of habeas corpus may also be prosecuted if expert

testimony relating to intimate partner battering and its effects was received into evidence but was limited at the trial court proceedings relating to a prisoner's incarceration for the commission of a violent felony committed prior to August 29, 1996, and there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that if the testimony had not been limited, the result of the proceedings would have been different.

~~This bill would authorize a defendant who suffered intimate partner battering and its effects, and who was convicted of one or more violent felonies, as specified, that were committed before August 29, 1996, and which resulted in a judgment of conviction after a plea or trial in which expert testimony on intimate partner battering and its effects was either not received into evidence or was limited, to file a petition, containing specified statements by the defendant, with the sentencing court for recall and resentencing if, during the crime, the defendant was in imminent danger or under duress, or acting in self-defense. The bill would require that a copy of the petition be served on the prosecuting agency. The bill would require that a reply to the petition, if any, be filed with the court within 60 days of the date on which the prosecuting agency was served the petition, unless a continuance is granted for good cause. The bill would require the court to hold a hearing to consider the defendant's statements, expert testimony, and any other new relevant information to determine whether, had the information been received into evidence at the trial court proceedings, there is a reasonable probability that the result of the proceedings would have been different. In that case, the bill would authorize the court to recall the sentence and commitment previously ordered and resentence the defendant, provided that the new sentence, if any, is not greater than the initial sentence.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1473.5 of the Penal Code is amended to
- 2 read:
- 3 1473.5. (a) A writ of habeas corpus also may be prosecuted
- 4 on the basis that expert testimony relating to intimate partner
- 5 battering and its effects, within the meaning of Section 1107 of
- 6 the Evidence Code, was not received in evidence, *or was received*
- 7 *into evidence but was limited*, at the trial court proceedings relating

1 to the prisoner's incarceration, and is of such substance that, had
2 it been received in evidence *or had it not been limited*, there is a
3 reasonable probability, sufficient to undermine confidence in the
4 judgment of conviction, that the result of the proceedings would
5 have been different. Sections 1260 to 1262, inclusive, apply to the
6 prosecution of a writ of habeas corpus pursuant to this section. As
7 used in this section, "trial court proceedings" means those court
8 proceedings that occur from the time the accusatory pleading is
9 filed until and including judgment and sentence.

10 (b) This section is limited to violent felonies as specified in
11 subdivision (c) of Section 667.5 that were committed before August
12 29, 1996, and that resulted in judgments of conviction after a plea
13 or trial as to which expert testimony admissible pursuant to Section
14 1107 of the Evidence Code may be probative on the issue of
15 culpability.

16 (c) If a petitioner for habeas corpus under this section has
17 previously filed a petition for writ of habeas corpus, it is grounds
18 for denial of the new petition if a court determined on the merits
19 in the prior petition that the omission of expert testimony relating
20 to battered women's syndrome or intimate partner battering and
21 its effects at trial was not prejudicial and did not entitle the
22 petitioner to the writ of habeas corpus.

23 (d) For purposes of this section, the changes that become
24 effective on January 1, 2005, are not intended to expand the uses
25 or applicability of expert testimony on battering and its effects that
26 were in effect immediately prior to that date in criminal cases.

27 ~~(e) This section shall remain in effect only until January 1, 2020,~~
28 ~~and as of that date is repealed, unless a later enacted statute, that~~
29 ~~is enacted before January 1, 2020, deletes or extends that date.~~

30 SECTION 1. ~~Chapter 6 (commencing with Section 1566) is~~
31 ~~added to Title 12 of Part 2 of the Penal Code, to read:~~

32
33 ~~CHAPTER 6. DEFENDANTS WHO ARE VICTIMS OF DOMESTIC~~
34 ~~VIOLENCE: RECALL AND RESENTENCING~~
35

36 ~~1566. (a) (1) A defendant who was convicted of one or more~~
37 ~~violent felonies as specified in subdivision (c) of Section 667.5~~
38 ~~that were committed before August 29, 1996, who suffered intimate~~
39 ~~partner battering and its effects, and which resulted in a judgment~~
40 ~~of conviction after a plea or trial shall be permitted to submit a~~

1 petition for recall and resentencing if, during each crime, the
2 defendant was in imminent danger or duress or if the defendant
3 acted in self-defense.

4 (2) This section applies only to cases where expert testimony
5 on intimate partner battering and its effects, within the meaning
6 of Section 1107 of the Evidence Code, was not received into
7 evidence or was limited during the trial court proceedings and
8 expert testimony admissible pursuant to Section 1107 of the
9 Evidence Code would be of probative value in regard to the
10 defendant's culpability or sentencing.

11 (b) (1) The defendant shall file the original petition with the
12 sentencing court. A copy of the petition shall be served on the
13 agency that prosecuted the case. The petition shall include all of
14 the following statements by the defendant:

15 (A) That he or she was convicted of one or more violent felonies
16 as specified in subdivision (c) of Section 667.5 that were committed
17 before August 29, 1996.

18 (B) That he or she suffered the effects of intimate partner
19 battering at the time of the violent offense or offenses.

20 (C) That expert testimony on intimate partner battering was not
21 received into evidence or was limited during the trial court
22 proceedings.

23 (D) That intimate partner battering and its effects were directly
24 related to his or her participation in the violent offense or offenses.

25 (E) A description of his or her actions while committing the
26 crime and the circumstances surrounding those actions that
27 demonstrate either that the crime was committed while the
28 defendant was in imminent danger or under duress, or that the
29 defendant was forced to act in self-defense in committing the crime.

30 (e) As used in this section, "trial court proceedings" means those
31 court proceedings that occur from the time the accusatory pleading
32 is filed until and including judgment and sentence.

33 (d) If any of the information required in subdivision (b) is
34 missing from the petition, or if proof of service on the prosecuting
35 agency is not provided, the court shall return the petition to the
36 defendant and advise the defendant that the matter cannot be
37 considered without the missing information.

38 (e) A reply to the petition, if any, shall be filed with the court
39 within 60 days of the date on which the prosecuting agency was
40 served the petition, unless a continuance is granted for good cause.

1 ~~(f) The court shall hold a hearing to consider the defendant's~~
2 ~~statements, expert testimony regarding intimate partner battering~~
3 ~~and its effects, and any other new, relevant information, including~~
4 ~~all of the factors described in subdivision (g) to determine whether,~~
5 ~~had the information been received into evidence at the trial court~~
6 ~~proceedings relating to the prisoner's incarceration, there is a~~
7 ~~reasonable probability that the result of the proceedings would~~
8 ~~have been different. In that case, the court may recall the sentence~~
9 ~~and commitment previously ordered and resentence the defendant,~~
10 ~~provided that the new sentence, if any, is not greater than the initial~~
11 ~~sentence. Victims, or victim family members if the victim is~~
12 ~~deceased, shall retain the right to participate in the hearing.~~

13 ~~(g) The factors that the court may consider in the hearing held~~
14 ~~pursuant to subdivision (f) include, but are not limited to, the~~
15 ~~following:~~

16 ~~(1) The defendant's history of physical, sexual, and emotional~~
17 ~~abuse or trauma.~~

18 ~~(2) The defendant does not have juvenile felony adjudications~~
19 ~~for assault or other felony crimes with a significant potential for~~
20 ~~personal harm to victims prior to the offense for which the sentence~~
21 ~~is being considered for recall.~~

22 ~~(3) The effects of intimate partner battering at the time of the~~
23 ~~commitment offense.~~

24 ~~(4) The defendant has performed acts that tend to indicate~~
25 ~~rehabilitation or the potential for rehabilitation, including, but not~~
26 ~~limited to, availing himself or herself of rehabilitative, educational,~~
27 ~~or vocational programs, if those programs have been available at~~
28 ~~his or her classification level and facility, using self-study for~~
29 ~~self-improvement, or showing evidence of remorse.~~